IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4594 of 2006
With
CIVIL APPLICATION No. 13270 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO. LTD. - Appellant(s)
Versus
BACHUBHAI BIJALBHAI & 3 - Defendant(s)

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Appearance :
MS MEGHA JANI for Appellant(s) : 1,
None for Defendant(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 5.4.2006 passed by the Motor Accident Claims Tribunal (Aux.), Bhavnagar in MAC Petition No358 of 1998 awarding compensation of Rs.3,33,000/- with proportionate costs and interest to the parents of Vashram Bachubhai Chudasama who died at the age of 24 years in a motor vehicle accident.

2. On 6.4.1998, the deceased was travelling as a cleaner in the truck-water tanker insured by the appellant-Insurance Company. The tanker was proceeding on the Bhavnagar-Rajkot road. On account of rash and negligent driving of the truck-water tanker at about 10 O'clock in the night, the truck met with an accident. The deceased sustained serious injuries and succumbed to the same before any medical aid could be rendered. The parents of the deceased, therefore, filed the claim petition for compensation of Rs.4,50,000/-.

3. After holding that the accident took place on account of the negligence of the driver of the truck-water tanker, the Tribunal assessed the monthly income of the deceased at Rs.1500/- p.m., assessed the prospective income of the deceased at Rs.2250/- p.m. and looking to the age of the deceased (24 years), the Tribunal applied the multiplier of 17

years and after deducting one-third amount as the personal expenses of the deceased, computed compensation for loss of dependency benefit at Rs.3,06,000/- (1500 X 12 X 17). The Tribunal further awarded compensation under the conventional heads and, in all, awarded Rs.3,33,000/- as the total compensation with the following break-up:-

Rs.3,06,000/-	for loss of dependency
Rs 10,000/-	for pain, shock and suffering
Rs. 10,000/-	for loss to estate
Rs. 5,000/-	for funeral expenses
Rs. 2,000/-	for transportation charges
Rs.3,33,000/-	Total

4. Ms Megha Jani, learned counsel for the appellant-Insurance Company has vehemently submitted that as per the settled legal position, while adopting the multiplier the Tribunal ought to have looked at the age of the claimants also and that the multiplier is to be adopted according to the age of the claimants and the age of the deceased, whichever is higher. In other words, if the claimants like the parents of the deceased are of advanced age and the deceased was unmarried, the age of the claimants would be relevant for determining the multiplier. It is submitted that on the date of the accident the father of the deceased was 60 years old and the mother of the deceased was 55 years old and,

therefore, the multiplier of 8 was required to be adopted as against which the Tribunal has adopted the multiplier of 17 years and, therefore, the compensation is required to be slashed to half the amount awarded by the Tribunal.

5. We find considerable substance in the submission of the learned counsel for the appellant-Insurance Company that in the facts of the present case since the deceased was an unmarried young man aged 24 years but the father and mother of the deceased were aged 60 and 55 years respectively, while adopting the multiplier, the age of the claimant was required to be considered and not the age of the deceased. But before discussing this aspect of the case, we find it necessary to consider the assessment of income made by the Tribunal which we find to be on the lower side.

6. The deceased was admittedly a cleaner on the truck-water tanker which met with the accident. The case of the claimants was that the monthly income of the deceased was Rs.3000/-p.m.. The Tribunal has, however, assessed the monthly income of the deceased at only Rs.1500/-p.m. on the ground that there was no documentary evidence produced by the claimants to prove that the deceased was engaged as a cleaner nor had the claimants proved income of the deceased with documentary evidence. The Tribunal appears to have lost sight of the fact that in case of such lowly paid employees like cleaner in private unorganized

sector, the employee would not be given any appointment order in writing. The very fact that the accident took place at 10 O'clock in night and the deceased was travelling in the said tanker and that in the First Information Report lodged by the driver of the truck (water tanker) himself it was stated that the deceased was a conductor i.e. cleaner on the tuck, the Tribunal ought to have proceeded on the basis that the deceased was employed as a cleaner in the truck. In this view of the matter, the salary of the deceased was required to be assessed at least at Rs.2500/-p.m.. The deceased was a young man aged 24 years and, therefore, it would be reasonable to proceed on the basis that with passage of time the prospective income of the deceased would have risen at least by 50% of the current income on the date of the accident i.e. Rs.3750/-p.m.. Deducting one-third amount therefrom as the personal expenses of the deceased, the dependency benefit would be Rs.2500/-p.m. i.e. Rs.30,000/-p.a..

7. Now coming back to the question of multiplier, it is true that the father of the deceased was aged 60 years on the date of the accident, but the mother of the deceased was aged only 55 years old and, therefore, the multiplier of at least 10 would be required to be adopted. The Second Schedule to the Act providing for structured formula would indicate multiplier of 11 years if a person is aged above 50 years but not exceeding 55 years, and multiplier of 8 years for a person above

55 years but not exceeding 60 years. In the facts and circumstances of the case, considering the age of the mother of the deceased, the multiplier of 10 would be reasonable. That would bring the loss of dependency benefit to Rs.3 lakhs. Adding thereto, the conventional amounts of Rs.20,000/- for loss to the estate and Rs.13,000/- for transportation charges and funeral expenses, the total compensation would be Rs.3,33,000/-. Hence, we are of the view that though the Tribunal did err in adopting the higher multiplier, for the reasons indicated hereinabove the award of compensation for Rs.3,33,000/- is not required to be disturbed.

8. The appeal is, therefore, summarily dismissed.

The amount deposited before this Court at the time of filing the appeal shall be transmitted to the Tribunal within three weeks from today.

9. Since the appeal is dismissed, the civil application for stay is also dismissed.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

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